

REMARKS

The present Amendment is in response to a Non-Final Office Action mailed November 19, 2007. A Petition for a Two-Month Extension of Time thereby extending the time for responding to the Office Action from February 19, 2008 to and including April 19, 2008 is submitted herewith.

In addition, revisions to the cross-reference paragraph of the specification are submitted herewith in order to correctly claim priority. Likewise, enclosed with this Amendment is an amended Application Data Sheet.

Claims 1-6, and 8-15 were rejected in the Action. Independent claims 1, 6, and 11 have been amended herein. No claims have been added or canceled herein, but claim 7 has been previously canceled. Therefore, claims 1-6 and 8-15 remain pending in the present application. No new matter has been added in the above amendments. Applicants set forth remarks relating to the Action below.

In the Action, the Examiner first rejected claims 1-6, and 8-10 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner asserted that he is confused regarding the recitation that the "perimetrical regions" have spacing of different widths when the region is only one defined or claimed recitation. Independent claims 1 and 6 recite "wherein the recess of the perimetrical regions of the first and second baseplates include walls that define an access volume between the baseplates in which the perimetrical regions of the baseplates are separated by a spacing having a second width greater than the first width."

Applicants have amended claims 1 and 6 to more clearly recite that the perimetrical regions are spaced by a first width

and the recesses of the perimetrical regions are spaced by a second greater width. Applicants submit that the amendments made to claims 1 and 6 herein overcome the current 35 U.S.C. 112, second paragraph rejection of claims 1-6, and 8-10 and thusly the rejections of those claims should be withdrawn.

The Examiner also rejected claims 11-15 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,641,614 to Wagner *et al.* ("*Wagner*"). The Examiner asserted that *Wagner*, in Fig. 40, shows a spinal device with baseplates 602, 604 mounted to one another and articulatable relative to one another by way of cam devices. The Examiner further asserted that it can be seen that the baseplates have a plurality of opposing recesses 632, 644 respectively formed therein. The Examiner noted that he is interpreting the claimed manipulation tool with a distal shaft in this way: the cam blocks are a manipulation tool since they move the baseplates and have distal shafts 640, 650, 660.

Firstly, the baseplates of *Wagner* are not "articulatable relative to one another." In contrast to the present invention, the first and second baseplates in *Wagner* simply move relative to one another when the cam blocks (what the Examiner calls a "manipulation tool") are moved. Thus, when the cam blocks of *Wagner* are not moved, the baseplates are fixed relative to one another for this reason, Applicants respectfully submit that *Wagner* cannot be used as an anticipatory reference.

Further, *Wagner* cannot be used to anticipate independent claim 11 because movement of the first baseplate with the second baseplate is not limited by interference between the distal shaft of the manipulation tool and the recesses of the baseplates, as is recited in claim 11. As described in col.26, 11.29-36 of *Wagner*:

"the cam blocks and slope tracks are preferably configured such that motion of the cam blocks toward the edges of the engaging plates causes the height between the engaging plates to increase. The cam blocks and slope tracks, however, may be configured such that motion of the cam blocks away from the edges of the engaging plates causes the height between the engaging plates to increase."

Elements 640, 650 and 660, which the Examiner referred to as a shaft distal end, are referred to as first, second and third screws, respectively, in *Wagner*. These screws have an engagement portion where an adjustment tool such as an Allen wrench may engage the screws. Rotation of each screw in a first angular direction causes the cam blocks 644, 654, and 666 corresponding to first screw 640, 650, and 660, respectively, to move towards an anterior or posterior edge of the baseplate thereby moving the baseplates away from one another. Therefore, movement of the first baseplate with the second baseplate is not limited by interference between the distal shaft and the recesses of the baseplates in *Wagner* as asserted by the Examiner. In contrast, movement of the first baseplate with the second baseplate is limited by interference between cam blocks 644, 654, and 664 of *Wagner* and the inner surfaces of the first and second baseplates.

Further, independent claim 11 has been amended herein to include that the recesses of the first and second baseplates have a circular wall having a base. The recesses in *Wagner* do not have such a structure. Further still, independent claim 11 has been amended herein to include that the shaft distal end of the manipulation tool of the present invention is configured to engage one of the at least one first recess of the first baseplate and one of the at least one corresponding opposing second recess of the second baseplate along an axis perpendicular to an axis along a length of the baseplate, which

is in contrast to *Wagner* wherein the shaft distal end engages a recess along an axis coaxial with a length of the baseplates. For the foregoing reasons, amended claim 11 is not anticipated by *Wagner* and should be in condition for allowance. Claims 12-15 are also unanticipated and should also be in condition for allowance, *inter alia*, because of their dependence from claim 11.

The Examiner also rejected claims 1-6 and 8-10 under 35 U.S.C. 103(a) as being unpatentable over *Wagner* in view of U.S. Pat. No. 7,238,203 to Bagga *et al.* ("*Bagga*"). The Examiner asserted that while *Wagner* fails to disclose the recesses with walls defining an access volume within the perimetrical region and spacing separating the regions of a greater width than the spacing separating the regions of the baseplates, *Bagga* teaches a perimetrical region with a recess 65 for engagement of a manipulation tool where the width of the walls defining an access volume to the recess is greater than the width of spacing of the recess. The Examiner asserted it would be obvious to one of ordinary skill in the art to incorporate a recess with walls as taught by *Bagga* with the device of *Wagner* such that it provides the surgeon the ability to access the manipulation area easily.

The implant disclosed in *Bagga* is a unitary structure and does not include first and second articulatable baseplates. All the Examiner has shown is that recess 65 has a greater diameter than slot 63 in a side wall of *Bagga*. There is no reason for one skilled in the art to combine the teaching of a recess in *Bagga* with that of *Wagner* such that it provides the surgeon the ability to access the manipulation area of articulatable baseplates easily.

The Examiner further asserted that should claims 1, 3-5 be found allowable, claims 6, and 8-10 will be objected to

under 37 CFR 1.75 as being a substantial duplicate thereof. Applicants have amended independent claim 6 herein to provide that at least one recess of the first baseplate is opposed to a recess of the second baseplate such that the recesses define an access volume between the baseplates. The access volume is therefore claimed differently in claim 6 than in claim 1 and should overcome the double patenting rejection.


As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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